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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM — 1971

NO. 72-94

CHARLES G. JACQUES, Jr.,
Petitioner

versus

LOUISIANA STATE BAR ASSOCIATION,
Respondent

# OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT, STATE OF LOUISIANA

## OPINION BELOW

The Supreme Court of the State of Louisiana rendered a written opinion, disbarring Charles G. Jacques, Jr., applicant herein, which opinion is reported at 260 La. 803, 257 So 2d 413 (1972). Application for rehearing was denied by the Louisiana Supreme Court on February 21, 1972.

## JURISDICTION

The jurisdiction of the Supreme Court of the United States is invoked under the terms and provisions of Title 28, Section 1257 (3), which jurisdiction is denied by respondent for the reason that the provisions of that section do not apply to the true factual or legal situation forming the substance of the application for Certiorari herein.

## QUESTION PRESENTED

The question or questions before this Honorable Court are not as stated by petitioner; the true facts and applica-

ble law relating to the case below, and to this matter before this Court, reduce the question to simply:

Will the United States Supreme Court review a decree of the Louisiana Supreme Court, the State Court of final jurisdiction disbarring an attorney from practicing before that State's courts, when that decree is based on proceedings in compliance with valid statutes, rules of court, and complete due process procedure?

## STATUTES AND RULES INVOLVED

(1) State of Louisiana, Constitution, 1921.

(2) Acts 1940, No. 54.

(3) Orders, Supreme Court, State of Louisiana, March 12, 1941.

(4) Articles of Incorporation, Louisiana State Bar Association, as amended.

(5) Pertinent portions of Rule XVI. Rules of Supreme Court of Louisiana.

## STATEMENT

The acts with which petitioner, Charles G. Jacques, Jr., was charged and found guilty are briefly as follows:[1]

SPECIFICATION NO. 1 — That despite an agreement with a fellow attorney, Joan Chauvin, Mr. Jacques without justification failed and refused to remit to her the sum of $12,183.33 as her portion of a legal fee earned. Further, Mr. Jacques failed and refused to account or return to Joan Chauvin other files to which she had a right.

[1]Specification No. 2 has been abandoned by the original petitioner for disbarment. Specification No. 3 was also abandoned because of the refusal of the complainant to appear and testify, leaving the petitioner unable to pursue the charges involved therein.

SPECIFICATION NO. 4 — That Mr. Jacques received the sum of $240.00 from R. F. Borja, which was for the specific and sole purpose of having Mr. Jacques immediately and timely file bankruptcy proceedings on behalf of said client. That, thereafter, Mr. Jacques did without justification attempt to apply this sum to fees allegedly due for other services. This action caused financial and other damages to Mr. Borja.

SPECIFICATION NO. 5 — That Mr. Jacques had received some $400.00 in fees from Carroll L. Guidry to perform services in connection with a suit for separation from bed and board. That Mr. Jacques failed to perform such services or to return to said client such sums received but unearned.

SPECIFICATION NO. 6 — That having accepted employment as attorney for Floyd Montgomery, Mr. Jacques failed to represent him or to communicate with him on the subject matter of such representation.

SPECIFICATION NO. 7 — That as attorney for Mrs. Elaine Booth, Mr. Jacques did receive in trust and tentative settlement on April 22, 1969, the sum of $72,500.00 represented by a check payable to the order of Hazel Elaine Booth and Charles G. Jacques, Jr., her attorney. Mrs. Booth did endorse this check and Mr. Jacques did thereafter deposit it to his account on April 24, 1969. Disbursement was not made until December 8, 1969, at which time Mr. Jacques paid to Mrs. Booth the sum of $48,333.33, her share of said settlement. From April 24, 1969, at which time Mr. Jacques received the $72,500.00 and December 8, 1969, at which time he made disbursement to his client, he did commingle these funds with his own and convert them to his own use so that on November 19, 1969, there was in this account only the total sum of $23,664.51. Fur-

ther, that on November 19, 1969, out of the $72,500.00 there was due to Mrs. Booth $48,333.33, indicating a conversion to his personal use of some $24,668.82. Further, in connection with Specification No. 1, Mr. Jacques had also converted to his own use the sum of $12,083.33 which was due to Miss Joan Chauvin.

The hearings on said specifications were held on July 13, 1970, and on July 27, 1970. Prior to said hearings, Respondent therein (Charles G. Jacques, Jr.) was furnished with a copy of these specifications and was given ample and due notice of the date of these hearings. Respondent therein (Charles G. Jacques, Jr.) appeared at both of these hearings. Thereafter, the Louisiana State Bar Association, through the Committee on Professional Ethics and Grievances, now known as the Committee on Professional Responsibility, and hereinafter referred to simply as the Committee, filed a petition with the Louisiana Supreme Court seeking the disbarment of Petitioner, Charles G. Jacques, Jr. Petitioner was personally served with a copy of the petition for disbarment and thereafter filed his answer.

Subsequently, the Louisiana Supreme Court appointed a practicing attorney of more than ten (10) years experience to act as its Commissioner to make findings of fact and conclusions of law, all according to the established statutory provisions of the State and rules of the Court.

On March 10, 1971, after due notice to Petitioner, Charles G. Jacques, Jr., the Commissioner held his hearing. Petitioner, Charles G. Jacques, Jr., was present at said hearing on March 10, 1971. On September 15, 1971, the Commissioner filed his report including his findings of fact, conclusions of law, and his recommendation as to appropriate action.

After due proceedings had the Supreme Court did on January 31, 1972, render a judgment of disbarment against Charles G. Jacques, Jr., and his application for a rehearing was denied.

It should be noted by the Court that during the course of the proceedings, including the formal investigative hearing before the Committee, and before the Commissioner of the Louisiana Supreme Court

(1) Petitioner refused to afford himself of the opportunity to obtain counsel after being advised of his right to counsel and chose to represent himself.

(2) Petitioner, subsequent to many voluntary misstatements of fact, voluntarily admitted his guilt to those specifications of which the Comissioner and the Court found him guilty.

(3) Petitioner at no time during the hearings before the Commissioner of the Louisiana Supreme Court objected to the questions propounded to him and at no time was he caused to answer any question or produce any document over his objection.

## ARGUMENT

Petitioner purports to present nine (9) questions to the Court. Respondent treats eight (8) of these questions as a group because of Petitioner's inaccurate evaluation of the factual circumstances of the proceedings against him, his misapplication of the holdings of various criminal cases relied upon, and his specious arguments do not merit lengthy, detailed rebuttal and Respondent will not so burden the Court. Petitioner's question No. 8 is noted separately.

## I.

Petitioner's questions, 1, 2, 3, 4, 5, 6, 7, and 9 involve implications of unconstitutional vagueness, the application of ex post facto law, whether certain specifications constitute a disbarment offense, and the lack of sufficient evidence to support some of the findings of the Supreme Court of Louisiana as to the guilt of Petitioner.

Initially, the query of unconstitutional vagueness is based upon a false premise. The Canons of Ethics and Rules of Disciplinary Procedure referred to by Petitioner as further defined and interpreted by the Louisiana Supreme Court are not unconstitutionally vague. Petitioner would require as in criminal charges explicit definition of the crime and resulting punishment. In the absence of the apparent misuse of its discretion, the federal courts have allowed the states to set the "moral fitness" standards for the admission to and the continuation of the practice of law. In no way has the Louisiana Supreme Court abused its discretion in holding as appropriate the penalty of disbarment in the case of Petitioner, Charles G. Jacques, Jr., for the *combined, clear, non-technical violations of commingling and converting his client's funds; his failure to remit to his fellow attorney her clearly justified share of a large fee; his misapplication of a client's fee and his unjustified failure to perform legal services for which he was paid.* There is nothing vague about such matters, and petitioner herein, Charles G. Jacques, Jr., as a reasonable man and a legal practitioner, had ample cause to believe that such actions would, in Louisiana, result in the very disciplinary action that has occurred. Louisiana State Bar Association v. Robert U. Blum, 256 La. 530, 237 So. 2d 366 (1970); Louisiana State Bar Association v. Donald S. Klein, 253 La. 603, 218 So. 2d 610 (1969); Louisiana State Bar Association v. Harold E. Powell, 250 La. 313, 195 So.

2d 280 (1967); Louisiana State Bar Association v. George J. Haylon, 250 La. 651, 198 So. 2d 391 (1967); Louisiana State Bar Association v. Prentiss E. Cox, 250 La. 755, 199 So. 2d 534 (1967); Louisiana State Bar Association v. Richard G. Van Buskirk, 249 La. 781, 191 So. 2d 497 (1966); Louisiana State Bar Association v. Roy F. Mayeaux, 249 La. 7, 184 So. 2d 537 (1966); Louisiana State Bar Association v. Jerome T. Powell, 248 La. 237, 178 So. 2d 235 (1965); Louisiana State Bar Association v. George O. Woods, 243 La. 94, 141 So. 2d 828 (1962); and Louisiana State Bar Association v. Thomas B. Wheeler, 243 La. 618, 145 So. 2d 744 (1962) Cert. Den. 83 S. Ct. 1537, 373 U.S. 933 (1963).

Secondly, Petitioner would infer the application of an ex post facto law to his case. The standards applied to Petitioner herein, Charles G. Jacques, Jr., are not new and are not novel. The standard applied is basically "good moral character" and "moral fitness." These have been defined by the Louisiana Supreme Court in its cases previously cited and except where it abuses its discretion it should be allowed to so set such standards.

Thirdly, and in connection with applicant's contention that certain admitted violations are questionable as to being disbarment offenses, it is noted that nowhere in its opinion does the Louisiana Supreme Court hold that each individual violation would merit disbarment. The Louisiana Supreme Court's decree of disbarment was based upon its findings as to the violations, all circumstances attendant thereon and, Charles G. Jacques, Jr.'s conduct during the proceedings. These resulted in the Court's conclusion that his character was such as to require his disbarment to protect the public, the profession, and the Courts.

Finally, it is noted that except for Petitioner's question No. 5 he admits the commission of the violations in ques-

tion but would claim that alleged unconstitutional vagueness did not afford him adequate warnings as to which admitted violations are punishable by disbarment. In view of the admissions of the violations by the applicant both in the State proceedings and in his application for this Writ, the Respondent herein does not feel further argument is required as to the existence of such violations.

## II.

Petitioner's question No. 8 in his application raises the issue of due process and Respondent, in detail, notes as follows:

THAT THE CASE HEREIN IS CLEARLY DISTINGUISHABLE FROM RE RUFFALO 390 US 544, 88 S. Ct. 1222, (1968). Petitioner would have the Court believe that this case is "on all fours" with Re Ruffalo. An analysis of these two cases will, with scintillating clarity, indicate that the Petitioner's case herein has *only* one point in common with Ruffalo. A reading of the Ruffalo case as reported in 390 US 544 will show that on the third day of a hearing before the Ohio Board of Commissioners involving twelve counts of alleged misconduct, the Board added a thirteenth charge *solely* on the testimony of Ruffalo and his investigator given during the subject hearing on the twelve charges. Ruffalo *objected* to the introduction of the thirteenth charge. There were no further hearings or evidence introduced. In fact, as stated in the decision in 390 US, Page 549, counsel for the Ohio Bar stated

> "We will stipuate that as far as we are concerned, the only facts that we will introduce in support of Specification No. 13 are the statements that Mr. Ruffalo has made here in open court and the testimony of Mike Orlando from the witness stand.

Those are the only facts we have to support this Specification No. 13."

Now, in the case of Petitioner Charles G. Jacques, Jr., said petitioner appeared before the Committee on July 13, 1970, to answer to six (6) specifications. As the record will indicate, there was no evidence taken from any witnesses indicating the commingling and conversion, the seventh (7th) charge. Petitioner himself in fact testified under oath that the funds were always present in his account. Subsequent to the hearing on July 13, 1970, Petitioner was furnished on July 17, 1970, clear and detailed notice of the seventh charge and was advised that a hearing on that charge would be held on July 27, 1970. Petitioner appeared at that hearing on July 27, 1970, and *did not object* to the seventh charge being introduced. Thereafter, evidence was taken at the hearing on July 27, 1970, consisting of the introduction of Petitioner's bank records and his statements that he had actually commingled and converted the funds in question. It is noted specifically that contrary to statements of Petitioner made during argument before the Louisiana Supreme Court, the record and testimony from the first hearing was not used in substantiating the charges under Specification No. 7. In fact, the transcript of the first hearing held July 13, 1970, is void of any evidence to indicate the commingling and conversion. All evidence establishing the guilt of Petitioner to the charges under Specification No. 7 came after the due notice of July 17, 1970, and at the hearing on July 27, 1970.

Further, Petitioner, contrary to Ruffalo, did not object to the amended Specification No. 7, did appear on July 27, 1970, and did fully testify thereon. Finally, the record will show that Petitioner did not call any witnesses for the July 27, 1970, hearing to testify on this charge. *THIS IS*

*NOT A "RUFFALO" FACT SITUATION!* Except for the introduction of an added charge, the case herein of Charles G. Jacques, Jr., has nothing further in common with Ruffalo.

Petitioner did not raise any questions as to due process or place any objections to Specification No. 7 at his hearing before the Court's Commissioner held March 10, 1971.

Further, Respondent notes that the charges involved in the case of Charles G. Jacques, Jr., under Specification No. 7 involved an apparent clear-cut violation, namely, the commingling and conversion of funds due to a fellow attorney and to a client and not to a technical violation such as involved in the Ruffalo case wherein the violation was such as not to be universally accepted as improper by all connected with the legal profession.

Finally, it is noted that the Re Ruffalo case discussed above and relied upon so heavily by applicant herein, Charles G. Jacques, Jr., involved the intervention of the United States Supreme Court in a Federal disbarment proceeding designed to take from Ruffalo his right to practice before *a Federal Court. It is most important to note that this Honorable Court refused to grant Writs of Certiorari to set aside the disbarment of Ruffalo by the State of Ohio.* Ruffalo v. Mahoning County Bar Association, 379 US 931 (1964).

**III.**

Petitioner has in most instances cited criminal cases inapplicable to his case under its factual structure. Spevack v. Klein, 385 U.S. 511 (1967) was one of the few disbarment cases cited by petitioner. This case is inapplicable to the case of petitioner for at no time was petitioner herein, Charles G. Jacques, Jr., forced under the threat of contempt or other penalty to incriminate himself by verbal

evidence or the production of records. He could have sought the shelter of the Fifth Amendment as to self-incrimination at any point. *This he did not choose to do despite the fact that he was a legal practitioner fully aware of his rights!*

**IV.**

In the alternative should, contrary to Respondent's position on Re Ruffalo, this Court hold a doubt as to complete procedural due process on Specification No. 7 against Charles G. Jacques, Jr., Respondent notes that the Louisiana Supreme Court's findings as to the other charges in Specifications No. 1, 4, 5, and 6, standing apart from Specification No. 7, support and justify its decree of disbarment.

**V.**

In view of the foregoing that we must return now to the single question presented for consideration by this Court, as set forth above.

Will the United States Supreme Court review a decree of a State Court of final jurisdiction disbarring an attorney, when that decree is based on proceedings in compliance with valid statutes, rules of court and procedures?

The jurisprudence of this Court is well settled that it will not review State Court judgments which rest on indepedent and adequate state grounds. *N.A.A.C.P. v. Alabama, ex rel Patterson,* 357 U.S. 449 (1958)

In the matter of *Fay v. Noia,* 372 U.S. 391, at p. 428, this Court, through Mr. Justice Brennan, reaffirmed this principle.

**VI.**

Respondent (Bar Association) will not belabor the question as to whether or not the practice of law is a right or

a privilege. It will merely quote the following:

> "The right to practice law is not a natural or constitutional right, nor an absolute right or a right de jure, but is a privilege or franchise. The right to practice law is not 'property,' nor in any sense a 'contract,' nor a 'privilege or immunity,' within the *constitutional* meaning of those terms. It cannot be assigned or inherited, but must be earned by hard study and *good conduct.*" 7 CJS 708, 709, and cases cited thereunder. (Emphasis furnished.)

## SUMMARY

The Petitioner, Charles G. Jacques, Jr. has been found guilty of violations of the laws of the State of Louisiana and the Canons of Ethics of the legal profession of the State of Louisiana. This finding was subsequent to complete due process including notice, hearings, and the right to defend himself against specific charges. This included hearings on July 13, 1970, and July 27, 1970, before the Committee and on March 10, 1971, before the Commissioner appointed by the Supreme Court of Louisiana. Petitioner appeared at each of these three hearings and was advised of his rights to counsel. Despite this advice, he chose to represent himself. Further, at no time was Petitioner forced to testify against himself or to produce documentary evidence over his objection. At no time did he urge or seek the constitutional shelter of the Fifth Amendment to avoid self-incrimination. Subsequently, the matter was by brief and oral argument, heard by the Louisiana State Supreme Court. During oral argument before the Court which had submitted him to the practice of law, for the first time applicant herein, Charles G. Jacques, Jr., urged certain constitutional deficiencies based upon an in-

complete and incorrect statement of the facts surrounding these proceedings. At that time, he urged the misapplication of certain criminal cases and the same few disbarment cases. The Louisiana Supreme Court had all these matters before it when it rendered its unanimous and clear decision on January 31, 1972, disbarring Charles G. Jacques, Jr.

Not one iota of evidence was produced by Petitioner to support his position, nor has there been any law shown in support thereof, either before the Louisiana Supreme Court, or before this Honorable Court.

There has been no allegation of inadequacy of the state procedures under which his disbarment was considered and finally rendered.

The jurisprudence of this Honorable Court is conclusive in two respects: First, it will not place on trial the procedures of a State Court, or a Court of final jurisdiction rendering a judgment of disciplinary action against a member which it, the Court, admitted; and secondly, this Court will decline to review State Court judgments which rest on independent and adequate state grounds notwithstanding co-presence of federal grounds.

## CONCLUSION

The judgment of the Supreme Court of the State of Louisiana is correct; it has found Charles G. Jacques, Jr., Applicant for this Writ, in violation of the laws of the State of Louisiana and the Canons of Ethics of the legal profession in this State, in light of the jurisprudence of this State; the conclusion of the Supreme Court of the State of Louisiana in this matter is consistent with all previous decisions based on similar facts and circumstances. Louisi-

ana State Bar Association v. Robert U. Blum, 256 La. 530, 237 So. 2d 366 (1970); Louisiana State Bar Association v. Donald S. Klein, 253 La. 603, 218 So. 2d 610 (1969); Louisiana State Bar Association v. Harold E. Powell, 250 La. 313, 195 So. 2d 280 (1967); Louisiana State Bar Association v. George J. Haylon, 250 La. 651, 198 So. 2d 391 (1967); Louisiana State Bar Association v. Prentiss E. Cox, 250 La. 755, 199 So. 2d 534 (1967); Louisiana State Bar Association v. Richard G. Van Buskirk, 249 La. 781, 191 So. 2d 497 (1966); Louisiana State Bar Association v. Roy F. Mayeaux, 249 La. 7, 184 So. 2d 537 (1966); Louisiana State Bar Association v. Jerome T. Powell, 248 La. 237, 178 So. 2d 235 (1965); Louisiana State Bar Association v. George O. Woods, 243 La. 94, 141 So. 2d 828 (1962); and Louisiana State Bar Association v. Thomas B. Wheeler, 243 La. 618, 145 So. 2d 774 (1962). Cert. Den. 83 S. Ct. 1537, 373 U.S. 933 (1963). Indeed there are no decisions by this Honorable Court inconsistent with this decision; certainly, there is no decision in contradiction involved. Respondent (Bar Association) respectfully urges that there is no occasion for further review by this Court, and that this petition for a Writ of Certiorari should be denied.

Respectfully submitted,

LOUISIANA STATE BAR ASSOCIATION
COMMITTEE ON PROFESSIONAL
RESPONSIBILITY

James H. Drury, Chairman
Pat W. Browne, Sr.
Leonard Fuhrer
A. Leon Hebert
Edgar H. Lancaster, Jr.
Henry A. Politz
John F. Pugh

A. Russell Roberts
John B. Scofield
Thomas O. Collins, Jr., Counsel

BY:.....
Thomas O. Collins, Jr., Counsel
101 Supreme Court Building
301 Loyola Avenue
New Orleans, Louisiana 70112
Telephone (504) 522-9172

## CERTIFICATE

I hereby certify that a copy of the foregoing brief has been served on counsel of record for applicant on this ..... day of ....., 1972, by U. S. Mail, postage prepaid.

Thomas O. Collins, Jr., Counsel

## APPENDIX

(1) Article 7, Section 10, Louisiana Constitution (1921):
"The Supreme Court of Louisiana has original jurisdiction in disciplinary proceedings by the Louisiana State Bar Associtaion against one of its members."

(2) Act, 1940, No. 54:
"The Louisiana State Bar Association is created and regulated under the rule-making power of the Supreme Court of Louisiana."

(3) Rule, Supreme Court of Louisiana, March 12, 1941:
"The Louisiana State Bar Association is hereby organized under the rule-making power of the Court."

(4) Article XIII, Section 2, Articles of Incorporation, Louisiana State Bar Association:
"All complaints looking to the suspension or disbarment of any member of the Bar of Louisiana shall be investigated by the Committee on Professional Ethics and Grievances . . ."

(5) Rule XVI:
"All matters touching upon the discipline and disbarment of members of the bar shall be governed by Article XIII of the Articles of Incorporation of the Louisiana State Bar Association adopted as the rules of this court on March 12, 1941."

MONDAY JAN 17 1972

SUPREME COURT OF LOUISIANA

No. 50970

SUPREME COURT OF LOUISIANA
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DEPUTY CLERK

LOUISIANA STATE BAR ASSOCIATION

Versus

CHARLES G. JACQUES, JR.

DISBARMENT PROCEEDING

DIXON, Justice

The Louisiana State Bar Association, through its Committee on Professional Ethics and Grievances, instituted these proceedings against Charles G. Jacques, Jr., a member of the Louisiana Bar practicing in New Orleans, alleging that the committee had conducted a full investigation of certain alleged misconduct on the part of respondent. After a full hearing in accordance with Rule XVI of this court and Article XIII of the articles of incorporation of the Louisiana State Bar Association of 1941 (now Article XV), the committee was unanimously of the opinion that the respondent had been guilty of violations of ethical standards of sufficient gravity to warrant disciplinary action and to evidence a lack of moral fitness for the practice of law.

We agree with the findings of fact and law of the Commissioner and paraphrase in extenso his statement of the case.

As provided by the rules of this court, notices were given to respondent in communications addressed to him under date of June 8, 1970 of six specifications and under date of July 17, 1970 of one additional specification. Hearings were held on specifications Nos. 1 through 6 on July 13, 1970 and on specification No. 7 on July 27, 1970. The committee unanimously concluded that the respondent was guilty of misconduct as set forth in five of the seven specifications. (The complaining witnesses in specifications 2 and 3 did not wish to pursue their complaints). The committee then filed these proceedings, and prayed that the court appoint a commissioner to take the evidence and, in due course, report to this court his findings of fact and conclusions of law and that, ultimately the respondent be suspended from the practice of law and his name stricken from the Roll of Attorneys and his license to practice law in the State of Louisiana be canceled for a period deemed appropriate by this court. Respondent was personally served with said petition for disbarment on November 10, 1970 but failed to answer thereto. On December 16, 1970, on motion by the committee, this court appointed Albert J. Flettrich as Commissioner to take evidence and report his findings of fact and conclusions of law.

After due notice, a hearing was held by the Commissioner on March 10, 1971. On the morning of the hearing, respondent filed an answer to the committee's petition for disbarment, the contents of which will be considered in connection with the discussion of each

individual specification.

Specifications Nos. 1 and 7, involved the same subject matter and will be considered together following the comments regarding specifications 2 through 6.

Specification No. 2 originated in a letter written by Frank W. White addressed to Mr. Thomas O. Collins, Jr., counsel for the committee, dated January 13, 1970, wherein Mr. White alleged that respondent had allowed prescription to run against the claim of his (White's) wife and two daughters for personal injuries and property damage resulting from an automobile accident on August 9, 1968. However, by letter dated July 1, 1970 Mr. White informed Mr. Collins that his reporting this complaint to the Louisiana State Bar Association was the result of a misunderstanding between him and his wife and respondent. In this letter Mr. White requested the committee to drop "the entire matter." As a result of said letter, the committee withdrew specification No. 2.

Specification No. 3 originated in a letter addressed to Mr. Tom Collins and members of the Louisiana State Bar Association by Thomas McCain Day which was received by the bar association on February 20, 1970 wherein Mr. Day alleged that respondent was supposed to be representing him in two cases, one of which had been pending three and one-half years and the other one and one-half years. Complainant contended that he was seldom able to contact respondent and when he did respondent's favorite trick was

telling him to call back in a couple of weeks and he would have his cases settled and then it was usually four to six weeks before he could talk to him again. Complainant requested the help of the bar association. However, on July 7, 1970 the complainant addressed a letter to the bar association stating that he wished to withdraw his complaint against respondent and that he was completely satisfied. Because of the complainant's refusal to appear and testify, the committee was unable to pursue the charges further.

Specification No. 4 originated by virtue of a letter addressed to Mr. Thomas Collins of the Louisiana State Bar Association by Rudolph F. Borja, Sr., dated March 24, 1970 wherein complainant stated that on September 29, 1969 he paid respondent $240.00 to file bankruptcy proceedings on his behalf. Although complainant signed all of the papers necessary, the bankruptcy proceedings were never filed despite repeated efforts and requests by the complainant to respondent to do so. It was brought out during the hearing that respondent did without justification attempt to apply this sum to fees allegedly due for other services. Subsequent to the hearing before the committee on July 13, 1970 respondent did refund complainant's payment of $240.00.

Specification No. 5 originated in a letter addressed by Carrol L. Guidry to Mr. Thomas Collins of the Louisiana State Bar Association dated April 2, 1970 wherein he alleged that the first time he went to see

respondent was in September of 1968 .or the purpose of obtaining a separation from his wife. At that time complainant paid respondent $200.00 for which complainant states respondent wrote a couple of letters and made a couple of telephone calls to Slidell and Covington, Louisiana. Then in October, 1968 complainant's wife filed a petition for divorce in Covington, Louisiana at which time respondent charged complainant an additional $200.00 for handling the defense of his wife's divorce action. Complainant charged that respondent did not represent him when the case came up for hearing and he had to get another lawyer. He stated that he called respondent's office many times but was never able to contact him nor did respondent return his telephone calls. Respondent in his answer filed in this record on the morning of the hearing before the Commissioner (on March 10, 1971) in response to specification No. 5 alleged that he returned the sum of $200.00 to Mr. Guidry, despite the pleadings filed and work done. It was not until March 9, 1971, the day before the hearing before the Commissioner, that respondent drew his check No. 168 to Carrol L. Guidry for $200.00 in return of the fee paid to him in connection with the defense of his wife's divorce action.

Specification No. 6 originated by virtue of a letter addressed by Floyd Montgomery to Mr. Thomas O. Collins, Jr. of the Louisiana State Bar Association dated May 5, 1970 wherein complainant alleged that on January 5, 1965 a suit was filed by him (Floyd Montgomery) and Joseph

Smith against the Shieldstone Laboratory Company. Complainant's attorney was Mr. Charles G. Jacques, Jr., respondent herein. The complainant alleged that respondent had him taking treatments for a long time but during the past year he was unable to contact respondent, nor would respondent write him or return his telephone calls; in other words, after five years he alleged that respondent refused to discuss his case. During the hearing before the Commissioner some questions arose as to whether or not this case had prescribed by virtue of the fact that a petition had not been filed within one year of the date of the accident or whether or not the case had prescribed for lack of prosecution within five years of the date of filing. Respondent stated that the case had definitely not been filed. In his answer to specification No. 6, respondent alleged "that Montgomery was paid and a full release secured from him through his attorney." During the hearing before the Commissioner it developed that complainant had not been paid nor a release secured as of that time. Respondent testified that he had negotiated a settlement with Mr. E. Howard McCaleb III, attorney for Floyd Montgomery; that he agreed to compromise and settle the Montgomery claim for $500.00 and on March 9, 1971, the day before the Commissioner's hearing, he drew his check No. 167 for $500.00 to Floyd Montgomery and Howard McCaleb, III, his attorney, and forwarded it together with a receipt and release to Mr. McCaleb by letter dated March 9, 1971.

Specifications Nos. 1 and 7 were the most serious of the charges brought by the committee against respondent. These specifications originated when the committee received a letter from Joan Elaine Chauvin dated December 29, 1969. She had been formerly associated with respondent in the practice of law, and when she joined the staff of United States Attorney in New Orleans she turned over to respondent all of her open and pending cases under an agreement whereby she would receive one-half of any fees collected, less costs. One of the cases turned over by her to respondent was a Jones Act case entitled Booth et als v. Chotin, Inc., No. 1834 of the United States District Court for the Eastern District of Louisiana. Miss Chauvin charged that on April 22, 1969 respondent received from Phelps, Dunbar, Marks, Claverie & Sims a check for $72,500.00 in settlement of this case. The Booths were originally clients of Miss Chauvin and when the cause of action arose she agreed with Mrs. Booth that she would handle the case on a contingent fee of one-third of the amount recovered. She then prepared and filed the petition in the United States District Court. Respondent, through negotiation with Mr. Charles E. Dunbar III, of the firm of Phelps, Dunbar, Marks, Claverie & Sims, compromised and settled the claim, as stated above on April 22, 1969, for $72,500.00. The check for $72,500.00 was deposited by respondent in his checking account, entitled "Charles G. Jacques, Jr., Attorney at Law" bearing No. 12-50-9486-4, in the Hibernia National

Bank in New Orleans on April 24, 1969.

At the time of the settlement, Mr. Dunbar testified that he went to respondent's office and met with him and his client, Mrs. Booth and other members of her family. At the time the check was given to respondent, Mrs. Booth executed a full release and also agreed to hold defendants harmless against any claim which might be later made by the minors, if any such claims were ever presented. It was Mr. Dunbar's understanding with respondent that out of an abundance of caution a succession would be opened and Mrs. Booth would be qualified as administratrix of her minors' estates and at that time she would execute another release. However, Mr. Dunbar testified that it was not a condition of the settlement that the $72,500.00 check not be negotiated. It was not until December 8, 1969 that respondent finally paid Mrs. Booth the amount due her as her share of the claim, $40,833.33 ($48,333.33 less $7,500.00 previously paid). And it was not until immediately after the first hearing before the committee on July 13, 1970 that respondent finally settled with Miss Chauvin for her portion of the attorneys' fees.

The committee filed specification No. 7 on July 17, 1970, which in effect charged that (1) the funds received by respondent in the Booth case were commingled with his personal funds and (2) he converted a portion of these funds to his own personal use. The committee subpoenaed that portion of respondent's bank account at

the Hibernia National Bank in New Orleans from April, 1969 through July, 1970. The bank account was produced and was the principal subject of the second meeting of the committee which was held on July 27, 1970. The bank account reflects the deposit by respondent of $72,500.00 in his said account on April 24, 1969. The account also reflects that on November 19, 1969, which was prior to the disbursement of any funds to Mrs. Booth or to Miss Chauvin, only the sum of $23,664.51 remained therein. Through successive deposits during the latter part of November and the early part of December, respondent built the account back up to $44,024.57 and on December 8, 1969 a check payable to Mrs. Booth in the sum of $40,833.33 was debited against the account. And on July 14, 1970, the day following the first meeting of the committee, a certified check payable to Miss Chauvin in the sum of $10,000.00, representing the balance due on her share of the attorneys' fees, was debited to the account.

At the first meeting of the committee on July 13, 1970 respondent testified that he had not expended any of the funds derived through the Booth settlement except $7,500.00 which he had advanced to Mrs. Booth. During the second hearing on July 27, 1970, after being confronted with his bank statement and Mr. Dunbar's testimony, respondent was asked if he still stood on that statement to which question respondent replied "no sir I do not." Respondent admitted he had lied because he was "scared

and frightened and panicked."

Respondent tried to explain his delay in disbursing the proceeds of the Booth settlement by stating that he was waiting until the final releases were obtained through the succession proceedings in Covington. The Commissioner thought, however, this explanation of no avail to him because he had no explanation or justification for only having $23,664.51 left in his bank account on November 19, 1969, at which time he still owed Mrs. Booth $40,833.33 and Miss Chauvin $12,000.00, her one-half of the fee. At that moment, he owed his client and fellow attorney a total of $52,833.33 and only $23,664.51 remained in his checking account.

Article 14 § 11 of the articles of incorporation of the Louisiana State Bar Association provides:

> "The lawyer shall refrain from any action whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in him by his client.
>
> "Money of the client or collected for the client or other trust property coming into the possession of the lawyer shall be reported and accounted for promptly, and shall not under any circumstances be commingled with his own or be used by him."

The article is applicable here.

The Commissioner found that the respondent did not seriously dispute any of the allegations. He noted in his delayed answer to the committee's petition that respondent attempted to exculpate himself by either saying that the complainants were paid or had withdrawn their charges.

However, the Commissioner believed, because of the facts and circumstances surrounding the payments or withdrawal of charges by the various complainants, that either the payments or the withdrawal of the charges occurred only because of proceedings brought by the bar association.

The Commissioner believed that the respondent had violated his professional duty and displayed a lack of professional integrity by his continued failure to respond to his clients' efforts to contact him, by his permitting cases to prescribe, by commingling his clients' funds with his own funds and by converting his clients' funds to his own personal use, all of which was detrimental to the integrity of the legal profession and required disciplinary action.

The Commissioner noted that the respondent could not in any way justify his use of his client's funds. From August 1 to November 19, the only money in respondent's account belonged to his client; on November 19, when she was due over $40,000.00, there was only $23,664.51 in the bank. Furthermore, his delay in accounting to his fellow attorney for her share of the attorneys' fees was reprehensible to say the least. It was noted that the settlement with his co-counsel was only made the day after the first committee hearing was held. The Commissioner was convinced that restitution and settlement by respondent with his clients and co-counsel was only made under the pressure of the disbarment proceedings.

The Commissioner cited and discussed six cases of this court to reach a conclusion: Louisiana State Bar Association v. Blum, 256 La. 530, 237 So. 2d 366; Louisiana State Bar Association v. Klein, 253 La. 603, 218 So. 2d 610; Louisiana State Bar Association v. Haylon, 250 La. 651, 198 So. 2d 391; Louisiana State Bar Association v. Van Buskirk, 249 La. 781, 191 So. 2d 497; Louisiana State Bar Association v. Mayeux, 249 La. 7, 184 So. 2d 537; and Louisiana State Bar Association v. Powell, 248 La. 237, 178 So. 2d 235.

These cases abundantly support the Commissioner's conclusion that respondent's conduct requires disciplinary action.

Respondent contends that Article 13 § 4 and Article 14 § 11 of the articles of incorporation of the Louisiana State Bar Association are unconstitutionally vague and over broad when construed either separately or together. That is, he contends that the articles provide that if a majority of the ethics and grievance committee is of the opinion that an attorney has probably been guilty of a violation of the laws relating to the professional conduct of attorneys and the practice of law or that the attorney has probably been guilty of a willful violation of a rule of professional ethics of sufficient gravity as to evidence a lack of moral fitness for the practice of law, the committee may institute a suit for disbarment or suspension and that same does not lay down sufficient standards as to what constitutes a violation.

There is no merit to this contention. The Committee on Professional Ethics and Grievances is empowered by law to hold hearings upon alleged misconduct. Article 13 § 2, Louisiana State Bar Association articles of incorporation. That article places the responsibility of investigating all complaints looking to the suspension and disbarment of an attorney in the Committee on Professional Ethics and Grievances. '(T)he committee may designate one or more of its members to take testimony and examine witnesses on behalf of the committee." If it concludes that there may be misconduct, it petitions this court to appoint a commissioner, hold a hearing, etc. The committee cannot disbar any member. Only this court has original jurisdiction to hear such matters under the Louisiana Constitution Article 7 § 10. The committee serves a quasi-judicial function. It receives evidence and allows the accused attorney a chance to be heard, to cross-examine witnesses, to call witnesses in his own defense, etc. Respondent has not at any stage of the proceedings pointed out wherein he was deprived of any constitutional right under the United States or Louisiana Constitutions, nor in what manner his rights were prejudiced. Respondent never once objected to the proceedings against him. Respondent could have adduced any evidence necessary for his defense. He was informed of his rights in the letters by the committee to him advising him of the hearings on the specifications. [1]

[1]The letters to Mr. Jacques advising him of the committee hearings read, in pertinent part, as follows:

We note that at the hearings before the Committee on Professional Ethics and Grievances and the commissioner appointed by this court that the respondent was advised of his right to have counsel present and that respondent voluntarily waived his right.

Respondent relies on the case of In re Novo, 200 La. 833, 9 So. 2d 201 for the proposition that there are no standards by which respondent can gauge his conduct. We disagree. This court found (in Novo) that the evidence indicated a legitimate dispute as to the computation of the fee which negated an intent to improperly commingle and convert. Under specification No. 7 in the case before us there was no fee dispute between respondent and his client whose funds he did commingle and convert. The transcript reflects that the respondent did not have a legitimate fee dispute with his co-counsel, Miss Chauvin. He admitted to the committee that he lied, that he did owe Miss Chauvin her one-half fee ($12,000.00) and that he refused to pay her. Besides, Article 14 of the Louisiana State Bar Association articles of incorporation laysdown clear standards of conduct by which an attorney can gauge his conduct.

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"Under the rules, you are hereby given a full opportunity to defend yourself before this Committee by introducing evidence and by cross-examining witnesses against you, and you have the right to be represented by counsel. You also have the right to compel the production of any books, records, documents or other evidence that may be relevant to this matter under investigation. The Committee will subpoena any witnesses selected by you and will also issue any writs of subpoena duces tecum you may desire which are pertinent.

. . . .

Respondent complains that the Commissioner erred in admitting into evidence the transcript of the hearings held by the committee on July 13, 1970 and July 17, 1970.

The transcript was made a part of the petition by the committee when it filed the petition in this court. It is a well settled rule of this court that the transcript of the evidence taken at the hearings before the Committee on Professional Ethics and Grievances is admissible. Louisiana State Bar Association v. Sackett, 231 La. 655, 92 So.2d 571; Louisiana State Bar Association v. Richard, 237 La. 530, 111 So.2d 761. Pursuant to our rules, the respondent in the case before us was advised of his right to counsel, that all witnesses were subject to cross-examination, that he had the right to call witnesses in his own defense, and that he had the right to object to the introduction of any evidence offered. And at the hearing held by the Commissioner, the respondent again was offered the opportunity to introduce any evidence that he might not have introduced at the hearing before the committee, and produce any witnesses in his own behalf. There is no denial of due process.

Respondent complains that he cannot be disbarred on probability only and that such violates his right to due process. Respondent misreads the rules of this court. The Committee on

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"Please send immediately to the undersigned at 101 Supreme Court Building, 301 Loyola Avenue, New Orleans, Louisiana 70112, the names and addresses of any witnesses you desire subpoenaed or a full description of any matters which you desire placed under writ of subpoena duces tecum."

Professional Ethics and Grievances cannot disbar. All it does is find facts and decide whether there is a probability that an attorney has willfully violated the ethical code laid down by the profession. In a sense, it performs the same function as a grand jury. Only this court may disbar an attorney. And it does so only after appointing a commissioner to take evidence, make findings of fact and law and state his conclusions therefrom. The commissioner receives the evidence under rules affording the attorney his due process rights. Thereafter, the commissioner files his report with this court. And in argument before this court, the respondent may again raise the issue of whether he was denied due process.

Respondent contends that the standard of "moral fitness for the practice of law" is unconstitutionally vague. We disagree. The phrase means that one must conform to standards of character and conduct laid down by the profession. In other words, one must conform to the Canon of Ethics (now the Code of Professional Responsibility).

Respondent contends that he was not given adequate notice of the charges against him to be able to properly defend himself. He alleges this especially with respect to specification No. 7. He claims that he only had ten days to prepare a defense.

In support of his position, respondent cites the case of In re Ruffalo, 391 U.S. 544, 88 S. Ct. 1222, 20 L. Ed. 2d 117. In Ruffalo, on the third day of a hearing before the Ohio Board of Commissioners involving twelve counts of alleged

misconduct, the board added a thirteenth charge based solely on testimony of Ruffalo and his investigator given during the hearing on the twelve charges. Counsel for Ruffalo objected to the addition of the thirteenth charge. No further hearings or evidence was taken on the thirteenth charge, although the commission gave the respondent additional time to reply.

Respondent in the case before us never objected to the introduction of the seventh specification. He was allowed the right to testify and explain why he was not guilty of the charge. Instead, he admitted that he had lied to the committee at its hearing on July 13, 1970 about related specification No. 1. Respondent never objected to specification No. 7 at his hearing before the Commissioner held March 10, 1971. The Ruffalo case is not applicable.

We note upon examining the record of the committee hearing on July 27, 1970 that respondent never complained of inadequate time to prepare a defense. He was an attorney. He could have asked the committee for more time. But he chose to proceed. He could have raised the same issue before the Commissioner. He cannot now complain. Even if respondent had complained, there would be no merit to his contention because we find that specification No. 7 is so closely related with specification No. 1 that for all intents and purposes they are one and the same.

It is a well settled principle that a disbarment proceeding is not so much for the punishment of the attorney as it is for the preservation of the integrity of the courts and

the salutary effect it has upon other members of the bar. In re Novó, supra; Louisiana State Bar Association v. Blum, supra. See also Louisiana State Bar Association v. Cox, 252 La. 978, 215 So. 2d 513; Louisiana State Bar Association v. Powell, supra; Louisiana State Bar Association v. Wheeler, 243 La. 618, 145 So. 2d 774; Louisiana State Bar Association v. Haack, 243 La. 1108, 150 So. 2d 32; In re Craven, 204 La. 486, 15 So. 2d 861.

This court has consistently held that absent mitigating circumstances, the commingling of the client's funds with those of the attorney and converting them to the attorney's own use constitutes misconduct sufficient to warrant disbarment. Louisiana State Bar Association v. Blum, supra; Louisiana State Bar Association v. Klein, supra; Louisiana State Bar Association v. Haylon, supra; Louisiana State Bar Association v. Mayeux, supra. The record discloses that there have been thirty-seven complaints against respondent since 1959 (for which respondent received six reprimands) plus the seven specifications here presented. This shows a course of conduct sufficient to warrant disbarment.

The Committee on Professional Ethics and Grievances prayed in its petition as follows:

> "WHEREFORE, petitioner prays that Respondent be ordered to plead or answer within fifteen (15) days from the date of service of a copy of this petition, and after issue joined, that the Court appoint a Commissioner to take the evidence, and, in due course,

> report to this Honorable Court his findings of fact and conclusions of law, and that, ultimately the Respondent be suspended from the practice of law, and that the name of Charles G. Jacques, Jr., Respondent, be stricken from the Roll of Attorneys and his license to practice law in the State of Louisiana be cancelled for a period deemed appropriate by this Court."

Respondent contends that since the petition of the committee only prays for suspension, then this court is without power to disbar.

We disagree with respondent's interpretation of the prayer. The petition prays that the respondent's name "be stricken from the Roll of Attorneys and his license to practice law in the State of Louisiana be cancelled for a period deemed appropriate by this Court." (Emphasis added). We also note that the petition is entitled "PETITION FOR DISBARMENT." It would require a strained interpretation to hold that the prayer and petition do not seek disbarment of respondent.

There is no difference between a prayer for suspension and a prayer for disbarment as to the requirements of due process. Respondent knew the charges against him. There is no reason to suppose that he would have defended himself with any more vigor had the prayer of the petition been phrased differently.

The fact that respondent had had a total of thirty-seven complaints of misconduct investigated by the bar association against him since 1959, exclusive of the

seven before us, should be considered in the disposition of this case. The fact that respondent has repaid all parties who questioned his conduct after a hearing before the Committee on Professional Ethics and Grievances does not show that he was in good faith when the complaints arose.

Respondent has violated specific canons. He has misappropriated his clients' funds. His admission before the committee demonstrates that he has great difficulty in telling the truth, and should not be trusted. His misconduct is habitual and of long standing. His continued practice of law would be an intolerable burden to the profession, its disciplinary committee, and the public. Disbarment is an appropriate remedy.

For the reasons assigned, it is ordered, adjudged and decreed that the name of Charles G. Jacques, Jr., respondent herein, be stricken from the Roll of Attorneys and his license to practice law in the State of Louisiana be revoked and the same is hereby canceled.

REHEARING REFUSED
FEB 21 1972

SUPREME COURT OF LOUISIANA
A TRUE COPY
AUG 1 1972
DEPUTY CLERK

SUPREME COURT

STATE OF LOUISIANA

SUPREME COURT OF LOUISIANA
FILED SEP 17 1971
Clerk

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NO. 50,979

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LOUISIANA STATE BAR ASSOCIATION

vs.

CHARLES G. JACQUES, JR.

---ooOoo---

REPORT OF COMMISSIONER

---ooOoo---

ALBERT J. FLETTRICH, COMMISSIONER
818 Gravier Street
New Orleans, Louisiana 70112

SUPREME COURT OF LOUISIANA
A TRUE COPY
AUG 1 1972
DEPUTY CLERK

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| LOUISIANA STATE BAR ASSOCIATION | * | SUPREME COURT |
| | * | |
| VS | * | STATE OF LOUISIANA |
| CHARLES G. JACQUES, JR. | * | NO. 50,979 |

* * *

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF LOUISIANA:

The Louisiana State Bar Association, through its Committee on Professional Ethics and Grievances, instituted these proceedings against Charles G. Jacques, Jr., a member of the Louisiana Bar practicing in New Orleans, alleging that the Committee had conducted a full investigation of certain alleged misconduct on the part of Respondent, and after full hearings had, in accordance with the Rules of this Honorable Court, the Committee was unanimously of the opinion that the Respondent had been guilty of violations of the laws of the State of Louisiana of sufficient gravity to warrant disciplinary action and that he had been guilty of such willful violations of the Rules of Professional Ethics as to evidence on his part a lack of moral fitness for the practice of law.

As provided by the Rules of this Honorable Court, notices were given to Respondent in communications addressed to him under date of June 8, 1970, consisting of six specifications and under date of July 17, 1970, consisting of one additional specification. Hearings were held on specifications 1 through 6 on July 13, 1970, and on specification No. 7 on July 27, 1970, and the Committee unanimously concluded that except as to specification No. 2, the Respondent was guilty of

misconduct as set forth in said specifications. The Committee then filed these proceedings for disbarment and prayed that after issue was joined, the Court appoint a Commissioner to take the evidence and, in due course, report to this Honorable Court his findings of fact and conclusions of law and that, ultimately the Respondent be suspended from the practice of law and his name stricken from the Roll of Attorneys and his license to practice law in the State of Louisiana be cancelled for a period deemed appropriate by this Court. Respondent was personally served with said Petition for Disbarment on November 10, 1970, but failed to answer thereto and on December 16, 1970, on motion by the Committee, this Court appointed the undersigned Commissioner to continue with these proceedings.

After due notice, a hearing was held by the Commissioner on March 10, 1971. On the morning of the hearing, Respondent filed an Answer to the Committee's Petition for Disbarment, the contents of which will be considered in connection with the discussion of each individual specification.

The specifications against the Respondent as found by the Committee are as follows:

> Specification No. 1:
>
> Miss Joan Elaine Chauvin an Attorney at Law upon assuming her duties as an Assistant United States Attorney turned over to you all her open and pending cases inasmuch as she had been associated with you on other matters prior to that time. In this connection and specifically in the case of Booth v. Chotin, Inc., U.S. D.C. No. 8134, you obtained a settlement sometime in the spring of 1969 and in connection therewith

received a check in the sum of $72,500.00. Attorneys' fees of $24,166.67 were received by you as a result of this settlement. In December of 1969, Joan Chauvin requested the payment of her one-half fee less the cost of $100 as agreed upon when she turned these files over to you. Further since 1967 you have failed, refused and neglected to complete many other files turned over to you by Joan Chauvin and have refused to make an accounting to her concerning these matters. Your conduct in this matter has caused Joan Chauvin to file a complaint with this Committee and you have in connection with the Committee's investigation, failed, refused and neglected to answer its correspondence.

Specification No. 2:

In August of 1968 you accepted employment as attorney for Frank W. White to represent him in his claims in property damages in connection with an automobile accident. Despite this client's repeated requests and efforts, you failed, refused and neglected to take any action in this matter and in fact, allowed the matter to prescribe to the detriment of this client. Your conduct in this matter has caused this client to file with this Committee a written complaint and in connection with its investigation thereof, you have failed, refused and neglected to answer the correspondence of this Committee.

Specification No. 3:

Some 3 years ago you accepted employment as attorney for Thomas McCain Day to represent him in two matters. To date you have failed, refused and neglected to perform the services for which you were employed. Additionally, you have refused to maintain communications with this client except to continually misrepresent the true status of his cases. The conduct herein has caused this client to file a complaint with the Committee and you have failed, refused and neglected to reply to this Committee's correspondence in connection therewith.

Specification No. 4:

In September of 1969 you accepted employment as attorney for Mr. R. F. Borja, Sr. Specifically you agreed to file bankruptcy proceedings on behalf of this client and in connection therewith received the sum of $240. Despite repeated efforts and requests of this client, you have failed, refused and neglected to date to perform the services for which you have been paid. Your procrastination and failure to act in this matter has caused your client undue and unnecessary financial distress. In this connection your client has filed with this Committee a written complaint concerning this matter and you have to date failed, refused and neglected to answer the Committee's correspondence sent to you by it in pursuing this investigation.

Specification No. 5:

In September of 1968 you received the sum of $200 to represent Carrol L. Guidry in a suit for separation from his wife. In that instance you did not file any pleadings on behalf of this client. In October of 1968 this client's wife filed for divorce in Covington, Louisiana and you received another $200 from this client to represent him in this matter. Although this matter has come up on the trial docket, you have failed, refused and neglected to contact the client or to represent him at the indicated time. To date you have failed, refused and neglected to return to this client the $400 in question for which you have performed no services. The complainant has filed with this Committee a written complaint and you have failed, refused and neglected to date to reply to this Committee's communications in connection with this matter.

Specification No. 6:

In 1965 you accepted employment to represent Floyd Montgomery in his suit against the Shieldstone Laboratory Company. Despite many attempts by this client, you have failed, refused and neglected to communicate with him concerning this matter and have failed to take steps necessary to properly represent him. The complainant has

filed with this Committee a written complaint and you have failed, refused and neglected to reply to the Committee's communications in connection therewith.

During the Committee's hearing of July 13, 1970, additional information was developed regarding specification No. 1 and the Committee subsequently filed specification No. 7 against Respondent which is as follows:

> That as attorney for Mrs. Elaine Booth in the matter of Rudolph R. Booth vs. Berwick Bay Towing Company Et Al you did receive in trust and tentative settlement on April 22, 1969 the sum of $72,500 represented by a check from Phelps, Dunbar, Marks, Claverie & Sims dated April 22, 1969 payable to the order to Hazel Elaine Booth and Charles G. Jacques, Jr., her attorney. Mrs. Booth did endorse this check and you did thereafter deposit same in your account with the Hibernia National Bank in New Orleans on April 24, 1969. Disbursements were not made in this matter until December 8, 1969 at which time you paid to Mrs. Booth the sum of $40,833.33. As the record will reflect between your receiving the check on April 24, 1969 until final disbursement on December 8, 1969, you did commingle these funds with your own and convert a portion thereof to your use so that on November 19, 1969 there was in this account only the total sum of $23,664.51. On said date of November 19, 1969 out of the $72,500 there was due to Mrs. Booth $48,333.33 which indicates on that date that you had converted to your personal use no less than $24,668.82. Additionally referring to Specification No. 1 you had likewise converted to your own use the sum of $12,083.33 which was due as part fee to Miss Joan Elaine Chauvin your co-attorney in this matter.

Specification Nos. 1 and 7, involve the same subject matter and will be considered together following

the comments regarding specifications 2 through 6.

Specification No. 2 originated in a letter written by Frank W. White addressed to Mr. Thomas O. Collins, Jr., Counsel for the Committee, dated January 13, 1970, wherein Mr. White alleged that Respondent had allowed prescription to run against the claim of his (White's) wife and two daughters for personal injuries and property damage resulting from an automobile accident on August 9, 1968. However, by letter dated July 1, 1970, Mr. White informed Mr. Collins that his reporting this complaint to the Louisiana State Bar Association was the result of a misunderstanding between him and his wife and Respondent. In this letter Mr. White requested the Committee to drop "the entire matter". As a result of said letter, the Committee withdrew specification No. 2.

Specification No. 3 originated in a letter addressed to Mr. Tom Collins and members of the Louisiana State Bar Association by Thomas McCain Day which was received by the Bar Association on February 20, 1970, wherein Mr. Day alleged that Respondent was suppose to be representing him in two cases, one of which had been pending 3½ years and the other 1½ years. Complainant contended that he was seldom able to contact Respondent and when he did, Respondent's favorite trick was telling him to call back in a couple of weeks and he would have his cases settled and then it was usually 4 to 6 weeks before he could talk to him again. Complainant requested the help of the Bar Association. However, on July 7, 1970, the complainant addressed a letter to the Bar Association stating that he wished

to withdraw his complaint against Respondent and that he was completely satisfied. Because of the complainant's refusal to appear and testify, the Committee was unable to pursue these charges further.

Specification No. 4 originated by virtue of a letter addressed to Mr. Thomas Collins of the Louisiana State Bar Association by Rudolph F. Borja, Sr., dated March 24, 1970, wherein complainant stated that on September 29, 1969, he paid Respondent $240.00 to file bankruptcy proceedings on his behalf. Although complainant signed all of the necessary papers, the bankruptcy proceedings were never filed despite repeated efforts and requests by the complainant to Respondent to do so. It was brought out during the hearing that Respondent did without justification attempt to apply this sum to fees allegedly due for other services. Subsequent to the hearing before the Committee on July 13, 1970, Respondent did refund complainant's payment of $240.00.

Specification No. 5 originated in a letter addressed by Carrol L. Guidry to Mr. Thomas Collins of the Louisiana State Bar Association dated April 2, 1970, wherein he alleged that the first time he went to see Respondent was in September of 1968 for the purpose of obtaining a separation from his wife. At that time complainant paid Respondent $200.00 for which complainant states Respondent wrote a couple of letters and made a couple of telephone calls to Slidell and Covington, Louisiana. Then in October, 1968, complainant's wife filed a Petition for Divorce in

Covington, Louisiana at which time Respondent charged complainant an additional $200.00 for handling the defense of his wife's divorce action. Complainant charged that Respondent did not represent him when the case came up for hearing and he had to get another lawyer. He stated that he called Respondent's office many times but was never able to contact him nor did Respondent return his telephone calls. Respondent in his Answer filed in this record on the morning of the hearing before the Commissioner namely, on March 10, 1971, in response to specification No. 5, Respondent alleged that he returned the sum of $200.00 to Mr. Guidry, despite the pleadings filed and work done. As a matter of fact, it was not until March 9th, 1971, the day before the hearing before the Commissioner, that Respondent drew his check No. 168 to Carroll L. Guidry for $200.00 in return of the fee paid to him in connection with the defense of his wife's divorce action. The Commissioner files and makes part of this record a photostat copy of said check.

Specification No. 6 originated by virtue of a letter addressed by Floyd Montgomery to Mr. Thomas O. Collins, Jr., of the Louisiana State Bar Association dated May 5, 1970, wherein complainant alleged that on January 5, 1965, a suit was filed by him (Floyd Montgomery) and Joseph Smith against the Shieldstone Laboratory Company. Complainant's attorney was Mr. Charles G. Jacques, Jr., Respondent herein. The complainant alleged that Respondent had him taking treatments for a long time but during the past year he was unable to contract Respondent, nor would Respondent

write him, or return his telephone calls; in other words, after five years he alleged that Respondent refused to discuss his case. During the hearing before the Commissioner some questions arose as to whether or not this case had prescribed by virtue of the fact that a petition had not been filed within one year of the date of the accident or whether or not the case had prescribed for lack of prosecution within five years of the date of filing. Respondent stated that the case had definitely not been filed (Comm'r Tr. Pg. 60). In his Answer to specification No. 6, Respondent alleged "that Montgomery was paid and a full release secured from him through his attorney." During the hearing before the Commissioner it developed that complainant had not been paid nor a release secured as of that time. Respondent testified that he had negotiated a settlement with Mr. E. Howard McCalab, III, attorney for Floyd Montgomery wherein he agreed to compromise and settle the Montgomery claim for $500.00 and on March 9, 1971, the day before the Commissioner's hearing, he drew his check No. 167 for $500.00 to Floyd Montgomery and Howard McCalab, III, his attorney and forwarded it together with a Receipt and Release to Mr. McCalab by letter dated March 9, 1971. Respondent furnished the Commissioner with photostat copies of said check and letter together with a duplicate Receipt and Release signed and acknowledged by the complainant on March 10, 1971, which the Commissioner makes part of the record.

Specification Nos. 1 and 7 are by far the most serious of the charges brought by the Committee against Respondent. These specifications originated when the

Committee received a letter from Joan Elaine Chauvin dated December 29, 1969, at which time Miss Chauvin was an assistant United States Attorney. She had been formerly associated with Respondent in the practice of law and when she joined the staff of United States Attorney in New Orleans she turned over to Respondent all of her open and pending cases under an agreement whereby she would receive one-half of any fees collected thereon less costs. One of the cases turned over by her to Respondent was a Jones Act case entitled Booth et als v. Chotin, Inc., No. 1834 of the United States District Court for the Eastern District of Louisiana. Miss Chauvin charged that on April 22, 1969, Respondent received from Phelps, Dunbar, Marks, Claverie & Sims a check for $72,500.00 in settlement of this case. The Booths were originally clients of Miss Chauvin and when the cause of action arose she agreed with Mrs. Booth that she would handle the case on a contingent fee of 1/3rd of the amount recovered. She then prepared and filed the Petition in the United States District Court. Respondent, through negotiation with Mr. Charles E. Dunbar, III, of the firm of Phelps, Dunbar, Marks, Claverie & Sims compromised and settled the claim, as stated above on April 22, 1969, for $72,500.00. This check for $72,500.00 was deposited by Respondent in his checking account bearing No. 12-50-9486-4 in the Hibernia National Bank in New Orleans on April 24, 1969.

At the time of the settlement, Mr. Dunbar testified before the Committee at the hearing on July 27, 1970, that he went to Respondent's office and met with him and

his client, Mrs. Booth who was present with other members of her family and at the time the check was given to Respondent, Mrs. Booth executed a full release and also agreed to hold defendants harmless against any claim which may be later made by the minors, if any such claims were ever presented. It was Mr. Dunbar's understanding with Respondent that out of a super abundance of caution, a succession would be opended and Mrs. Booth would be qualified as Administratrix of her minors' estates and at that time she would execute another release. However, Mr. Dunbar testified that it was not a condition of the settlement that the $72,500.00 check not be negotiated. It was not until December 8, 1969, that Respondent finally paid Mrs. Booth the amount due her as her share of the claim namely $40,833.33 ($48,333.33 less $7,500.00 previously paid). And it was not until immediately after the first hearing before the Committee on July 13, 1970, that Respondent finally settled with Miss Chauvin for her portion of the attorneys' fees.

By virtue of the testimony developed at the first meeting of the Committee on July 13, 1970, the Committee filed specification No. 7 which in effect contained the double charges that (1) the funds received by Respondent in the Booth case were commingled with his personal funds and (2) he converted a portion of these funds to his own personal use. The Committee subpoenaed that portion of Respondent's bank account at the Hibernia National Bank in New Orleans entitled "Charles G. Jacques, Jr., Attorney at Law" bearing No. 12-50-9486-4 from April 1969 through July 1970. The bank account was produced and was the principle sub-

ject of the second meeting of the Committee which was held on July 27, 1970. The bank account reflects the deposit by Respondent of $72,500.00 in his said account on April 24, 1969. The account also reflects that on November 19, 1969, which was prior to the disbursement of any funds to Mrs. Booth, the plaintiff in said proceedings or to Miss Chauvin, his co-counsel in said proceedings, only the sum of $23,664.51 remained therein. Through successive deposits during the latter part of November and the early part of December Respondent built the account back up to $44,024.57 and on December 8, 1969, a check payable to Mrs. Booth in the sum of $40,833.33 was debited against the account. And on July 14, 1970, the day following the first meeting of the Committee, a certified check payable to Miss Chauvin in the sum of $10,000.00 representing the balance due on her share of the attorneys' fees, was debited to the account.

At the first meeting of the Committee on July 13, 1970, Respondent testified that he had not expended any of the funds derived through the Booth settlement except $7,500.00 which he had advanced to Mrs. Booth. During the second hearing on July 27, 1970, after being confronted with his bank statement and Mr. Dunbar's testimony, Respondent was asked if he still stood on that statement to which question Respondent replied "no sir I do not." When asked why did he lie to this Committee, Respondent replied that he was "scared and frightened and panicked". (Tr., Committee hearing, 7/27/70 P. 30).

Defendant tried to explain his delay in disbursing the proceeds of the Booth settlement by stating that he was waiting until the final releases were obtained through the succession proceedings in Covington. However, this explanation is of no avail to him because he has no explanation or justification for only having $23,664.51 left in his bank account on November 19, 1969, at which time he still owed Mrs. Booth $40,833.33, being the balance of her 2/3rds share of the amount collected, and he owed Miss Chauvin $12,000.00 being her one-half of the 1/3rd contingent attorney's fee. In other words, at that moment, he owed his client and fellow attorney a total of $52,833.33 whereas only $23,664.51 remained in his checking account.

In addition to the aforesaid specifications, the Commissioner notes on Page 81 of the transcript of the second Committee hearing on July 27, 1970, that 37 complaints against Respondent had been lodged with this Committee.

The Respondent does not seriously dispute any of the foregoing allegations. In his delayed Answer to the Committee's Petition, Respondent attempts to exculpate himself by either saying that the complainants were paid or had withdrawn the charges. However, the Commissioner believes by virtue of the facts and circumstances surrounding the payments and/or withdrawal of charges by the various complainants that either the payments or the withdrawal of the charges occurred only after pressure was brought upon Respondent by the

Bar Association/or either immediately prior to or simultaneous with the Committee's and Commissioner's hearings. In other words, the Commissioner believes that restitution was made by the Respondent only because of the charges which were made against him the Committee and the pressure brought upon him, and it is only a matter of speculation whether or not restitution would have ever been made to the complainants had not these charges been brought.

The Commissioner believes that the Respondent has violated his professional duty and displayed a lack of professional integrity by his continued failure to respond to his clients' efforts to contact him, by his permitting cases to prescribe, by commingling his clients' funds with his own funds and by converting his clients' funds to his own personal use, all of which is most detrimental to the integrity of the legal profession and which conduct requires disciplinary action.

Respondent does not seriously dispute any of the foregoing fact. His argument to the effect that he was holding back on the payment of the amount due his clients out of the proceeds of the Booth settlement can not justify his commingling of the proceeds of said settlement which his own funds and the conversion thereof to his own use. Furthermore, his delay in accounting to his fellow attorney for her share of the attorneys' fees in said settlement is reprehensible and it is noted that the settlement with said attorney was only made after the charges were filed against him by the Committee and the day after the first Committee hearing

was held. As a matter of fact, in reviewing the other specifications, the Commissioner is convinced that restitution and settlement by Respondent with his respected clients and co-counsel was only made under the pressure of these disbarment proceedings.

CONCLUSIONS OF LAW

This Court has taken a firm stand against members of the Bar who have been charged with commingling their client's funds with their own funds and converting same to their own personal use.

In the case of Louisiana State Bar Association v. Blum, 256 La. 530, 237 So. 2d 366 (1970) the Respondent converted a portion of the proceeds of the sales price of a piece of property to his own use when he failed to disburse said funds to Eureka Homestead Society in satisfaction of a mortgage bearing against the property and which involved a number of other instances whereby the Respondent commingled his client's funds with his own funds and converted same to his own use. In this case the Court in considering the proper disciplinary action to be taken against the Respondent observed that the purpose of disciplining a practicing attorney is not intended as a punishment, but rather for the protection of the public against the misconduct and illegal action of members of the Bar as well as protection of the integrity of the legal profession. And the Court observed that although the record supports Respondent's contention that he had made restitution in connection with a number of the specifi-

cations against him, the records shows that this was only done after the complaints were filed with our grievance committee and pressure brought upon the Respondent to make such restitution. The Court concluded that the Respondent was guilty of ethical and profession misconduct of such gravity as to evidence his total lack of moral fitness for the practice of law and ordered his disbarment.

In the case of State Bar Association v. Klein, 253 La. 603, 218 So. 2d 610 (1969) a similar situation was involved as that which existed in the Blum case, except the funds of the client which was used by the Respondent in the Klein case were minimal, this Court found that in each specification the Respondent had commingled his client's funds with his own and converted them to his own use and in each instance it was only after the intervention of the Committee that he made restitution. In the Klein case this Court observed that "because of their professional status, attorneys must adhere to a high standard of conduct in relation with their clients. The conversion of a client's funds to personal use is one of the most serious violations of an attorney's obligation. The record reflected a pattern of unprofessional conduct extending over a period of several years. There were no extenuating circumstances. Although Respondent had made restitution in most of the cases in which he misused his clients' funds, he did so only after the intervention of the Committee on Professional Ethics or after the threat of legal action. The Court concluded that disbarment was the only appropriate disposition.

The case of Louisiana State Bar Association v. Haylon, 250 La. 651, 198 So. 2d, 391 (1967) involved another incident whereby a member of the Bar retained monies belonging to his client, commingled same with his own funds and used the money to pay his personal obligations. In this instance the Respondent misappropriated $2,742.00 of his client's money of which he made restitution in part. His excuse was that he had placed the money in a separate bank account then withdrew it and gave it to his wife to hold but she used the money to pay a hospital bill incurred by her. Thereafter he set aside certain monies hoping to accumulate sufficient funds to remit the balance due on his obligation but, before he could do so, a large portion of these savings was seized by the Federal Government. These excuses, the Court observed, while no doubt true, provide at most tenuous support for mitigation of Respondent's unethical conduct. In ordering the Respondent's disbarment in this case the Court held that the misappropration by an attorney of funds collected for his client is such a serious breach of trust that it would be contrary to the public interest to allow the offender to continue in the practice of law. High standards of honesty and righteousness have been erected for these engaged in the legal profession and all members of it are required to take an oath to uphold these ideals of exemplary conduct upon their admission to the Bar. Hence, the violator of the trust of his clients must expect disbarment. Suspension does not vouchsafe the protection to which the public is entitled. Numerous cases are cited by the Court in this

Haylon case to support disbarment.

In the case of Louisiana State Bar Association v. Van Buskirk, 249 La. 781, 191 So. 2d 497 (1966) the Respondent accepted employment with a Texas law firm to collect a promissory note. Respondent collected approximately $600.00 from the debtor in settlement of the note. Despite repeated demand from the forwarding attorneys, Respondent failed to remit the sum collected and had not done so at the time of the Commissioner's hearing. Again during 1962, a client retained Respondent to collect an overdue account. Following collection, Respondent sent the client his check for $269.74 which the bank refused to honor because of insufficient funds on deposit. As of the date of the Commissioner's hearing in this proceeding, the Respondent had not yet accounted to his client. Although in this case only approximately $800.00 or $900.00 was involved, the Court observed that because of their professional status, attorneys must adhere to a high standard of conduct in relations with their clients. The conversion of a client's funds is one of the most serious violations of an attorney's obligations. For the protection of the Courts and the public, the Court concluded that Respondent must be disbarred.

In the case of Louisiana State Bar Association v. Mayeux, 249 La. 7, 184 So. 2d 537 (1966) this Court adopted the Commissioner's findings to the effect that Respondent was guilty of failure to faithfully and honestly discharge his professional and legal duty to report, account for and remit the monies of his clients;

that he issued various N.S.F. checks; failed to pay the salary of his law office employees; that he converted the property of his clients, commingling money of his clients with his own and used the funds for his own purposes. The Commissioner recommended that Respondent be disbarred and the Committee on Professional Ethics and Grievances concurred in the report. In this case this Court cited the canon governing the position of trust which an attorney occupies in relation to his client which canon is, in part, to the effect:

> "The lawyer shall refrain from any action whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in him by his client.
>
> Money of the client or collected for the client or other trust property coming into the possession of the lawyer shall be reported and accounted for promptly, and should not under any circumstances be commingled with his own or be used by him." Articles of Incorporation of Louisiana State Bar Association, art. 14, Section 11.

Also pertinent to this case, is the following citation from 7 C.J.S. Attorney and Client, Section 25, as follows:

> "Payment or application of the amount due or withheld, when made by the attorney after the proceedings for disbarment have been commenced, or are about to be instituted, does not operate to relieve one from the liability already incurred, and the court may still proceed to disbar him. A fortiori, a mere intent, or offer to make restitution, or a tender of the money withheld, constitutes no defense."

> Such conduct may be considered by the court with other facts in determining whether the over all pattern of conduct of the attorney is such that disciplinary action is proper.

At this point, it is noted that the Committee observed, as stated above, that the Respondent in the present case has been involved in numerous complaints (at least 37 complaints) filed with the Committee on Professional Ethics and Grievances (Tr. hearing July 27, 1970, Pg. 81) although all of these complaints were not necessarily made part of the formal specifications which were filed against this Respondent.

Quoting again from the Mayeux case, this Court said:

> "The court ordered Respondent's disbarment despite the fact that nominal amounts of client's funds were commingled with the attorney's personal funds and converted to his own personal use."

On the other hand, in the case of Louisiana State Bar Association v. Powell, 248 La. 237, 178 So. 2d, 235 (1965) this Court considered the fact that the offense for which the Respondent was charged was his first offense in many years of honorable practice and at the time he committed the act charged, he was under a mental and emotional strain because of business difficulties and distress over the condition over a mentally retarded child. The defendant "threw himself upon the mercy of the Court" made full restitution and assured the Court it

would never again be called upon the entertain similar charges against him or any other charge of professional misconduct. Remembering, that these proceedings only involved one charge against the Respondent, the Court was impressed with the sincerity with which he frankly admitted the plight in which he found himself that resulted in the action forming the basis of this proceeding and the sincerity with which he stated he has learned his lession and will never again be brought before us on any charge or professional misconduct. Under these circumstances, the Court suspended the Respondent for 2 years.

## CONCLUSION

The evidence establishes without question that Respondent Jacques was substantially guilty of the charges and specifications brought against him and although he made restitution, said restitution on his part was only made after these charges were brought against him by the Committee on Professional Ethics and Grievances and as a matter of fact in several instances only on or about the day of the hearings before the Committee and the Commissioner. There is no doubt in the Commissioner's mind that the Respondent was guilty of the failure to faithfully and honestly discharge his professional and legal duty to promptly report, account for and remit the monies collected by him for the account of his clients. Furthermore, he procrastinated an undue length of time in accounting to his fellow attorney for her share of the

attorneys' fees due her in the Booth case. As a matter of fact, approximately 15 months elapsed from April 24, 1969, the date upon which he deposited the sum of $72,500.00 in his bank account and July 14, 1970, the date when he remitted the final $10,000.00 to his co-attorney, in said case. His actions in this regard are most reprehensible and his excuses for nonpayment, utterly invalid and baseless. Regardless of the ultimate payment of his client's share of the settlement of the Booth case and the ultimate payment of his fellow attorney's portion of attorneys' fees, Respondent can not be excused or pardoned for the commingling of the proceeds of said substantial settlement with his own personal funds and the conversion thereof to his own personal use. It is recalled that of the $72,500.00 deposited in his account on April 24, 1969, only $23,664.51 remained in said account on November 19, 1969, which was prior to the repayment by him of the balance due his client ($40,833.33) and the balance due his fellow attorney of approximately $12,000.00. In other words on said date, namely, November 19, 1969, his account was short $29,168.82.

The Commissioner also notes that the Respondent deliberately and intentionally misrepresented the facts to the Committee when he was asked "Mr. Jacques, did at all times between April and December, was there at least $72,500.00 belonging to the Booth case less and except the amount you paid directly to Mrs. Booth?" Answer: "Yes, sir. Yes, sir." (Tr. hearing July 13, 1970, Page 86).

At a later date at the Committee hearing of July 27, 1970, Respondent admitted that he lied to the Committee explaining that he was "scared and frightened and panicked" (Tr. hearing July 27, 1970, Page 30 and 31).

The Commissioner considers the Respondent's actions in regard to the specifications brought against him and the other 37 complaints received by the Committee which were not identified, constituted a pattern of unethical and unprofessional conduct detrimental to the integrity of the legal profession. Therefore, he should be properly disciplined for his malpractice. Recognizing that the purpose of disbarment is not necessarily punishment but protection of the Courts and the public, the Commissioner is of the opinion that a prolonged suspension of the practice of law rather than the severe penalty of disbarment should be sufficient to accomplish that purpose and impress upon the Respondent his duty as a lawyer and the necessity of maintaining the integrity of the Bar.

## CONCLUSION

Accordingly, it is the recommendation of the Commissioner that Charles G. Jacques, Jr., be suspended from the practice of law in the State of Louisiana for a period of five years from the date of a final decree in this matter.

Respectfully submitted

Albert J. Flettrich

ALBERT J. FLETTRICH, COMMISSIONER

SEPTEMBER 15, 1971.

THE COURT OF LOUISIANA
A TRUE COPY
AUG 1 1972